

**Illinois Department of Revenue
Regulations**

Title 86 Part 130 Section 130.901 Civil Penalties
--

TITLE 86: REVENUE
PART 130
RETAILERS' OCCUPATION TAX

SUBPART I: PENALTIES AND INTEREST

Section 130.901 Civil Penalties

Beginning January 1, 1994, the Uniform Penalty and Interest Act [35 ILCS 735] applies to civil penalties imposed for violations of the Retailers' Occupation Tax Act or of any regulation of the Department issued pursuant to that Act. (See 86 Ill. Adm. Code 700 for explanations and examples of the application of these penalties.) The Retailers' Occupation Tax Act provided the following penalties for violations of the Act or of any Regulation of the Department issued pursuant thereto prior to January 1, 1994:

a) Filing an Incorrect Return

If the tax computed upon the basis of the gross receipts as fixed by the Department is greater than the amount of tax due under the return or returns as filed, the Department shall (or if the tax or any part thereof that is admitted to be due by a return or returns, whether filed on time or not, is not paid, the Department may) issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 10% thereof: Provided, that if the incorrectness of any return or returns as determined by the Department is due to fraud, said penalty shall be 30% of the tax due (Section 4 of the Act). The above-quoted penalties apply on or after January 1, 1988 through December 31, 1993.

b) Failure to File Return When Required, but Payment Prior to Notice of Tax Liability

In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return and pays the tax, he shall also pay a penalty of 10% of the amount of the tax. (Section 5 of the Act)

1) The above-quoted penalty applies January 1, 1988 through December 31, 1993.

A) EXAMPLE: The taxpayer's return for November 1987, is required to be filed on or before December 31, 1987. The taxpayer files the return on January 10, 1988. Because the return is filed late in January 1988, it is subject to the 10% penalty rate that went into effect January 1, 1988.

B) EXAMPLE: The taxpayer's return for October 1987, is required to be filed on or before November 30, 1987. The taxpayer files the return on

December 12, 1987. Because the return is filed late during December 1987, it is subject to the 7.5% penalty rate that was in effect during December 1987.

- 2) As to tax liability incurred before November 1, 1987, but on or after December 1, 1984, the penalty in this situation is 7.5%.

c) Filing Return at Required Time but Failure to Pay Tax

In case any person engaged in the business of selling tangible personal property at retail files the return at the time required by the Act but fails to pay the tax, or any part thereof, when due, a penalty of 10% of the amount of the tax unpaid when due shall be added thereto. (Section 5 of the Act)

- 1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.
- 2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.

d) Filing Late Return Without Payment of Entire Tax

In case any person engaged in the business of selling tangible personal property at retail fails to file a return when and as herein required, but thereafter, prior to the Department's issuance of a notice of tax liability under this section, files a return but fails to pay the entire tax, a penalty of 10% of the full amount of tax shown by such return shall be added thereto. (Section 5 of the Act)

- 1) The above-quoted penalty applies on or after January 1, 1988 through December 31, 1993.
- 2) As to tax liability incurred before January 1, 1988, but on or after December 1, 1984, the penalty in this situation is 7.5%.

e) Failure to File Return When Required, and Failure to Pay Prior to Notice by Department

In case any person engaged in the business of selling tangible personal property at retail fails to file a return, the Department shall determine the amount of tax due from him according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie evidence of the correctness of the amount of tax due, as shown in such determination.... The Department shall issue the taxpayer a notice of tax liability for the amount of tax claimed by the Department to be due, together with a penalty of 30% thereof. (Section 5 of the Act)

- 1) The above-quoted penalty applies to tax liability incurred on or after December 1, 1984 through December 31, 1993.
- 2) As to tax liability incurred before December 1, 1984, but after July 1, 1965, the penalty in this situation is 20%.

f) Effect of a Taxpayer's Bankruptcy Filing Upon a Notice of Tax Liability

Generally, if a protest to a notice of tax liability and a request for hearing is not filed within 60 days after issuance of a Notice of Tax Liability (NTL), such NTL shall become final without the necessity of a final assessment being issued and shall be deemed to be a final assessment. (See Section 5 of the Act) However, if prior to the issuance of the NTL, a taxpayer has filed a petition in U.S. Bankruptcy Court and the automatic stay is still in effect, or if a taxpayer files such a petition within 60 days after the issuance of an NTL, the automatic stay prevents any pre-petition liability included in the NTL from becoming final even though not protested within 60 days after the issuance of the NTL. If any pre-petition tax included in the NTL is not paid to the Department through the bankruptcy proceeding, adjudicated by the bankruptcy court, or discharged by the bankruptcy court, the taxpayer has 60 days after termination of the automatic stay to protest the pre-petition liability and request an administrative hearing pursuant to 86 Ill. Adm. Code 200.

g) Over-Collection of Tax, or Collection of Tax on Nontaxable Receipts

If a seller collects an amount (however designated) that purports to reimburse the seller for Retailers' Occupation Tax liability measured by receipts that are not subject to retailers' occupation tax, or if a seller, in collecting an amount (however designated) that purports to reimburse the seller for Retailers' Occupation Tax liability measured by receipts that are subject to tax under the Act, collects more from the purchaser than the seller's Retailers' Occupation Tax liability on the transaction, the purchaser shall have a legal right to claim a refund of that amount from the seller. If, however, that amount is not refunded to the purchaser for any reason, the seller is liable to pay that amount to the Department. This subsection (g) does not apply to an amount collected by the seller as reimbursement for the seller's Retailers' Occupation Tax liability on receipts that are subject to tax under the Act as long as such collection is made in compliance with the tax collection brackets prescribed by the Department at 86 Ill. Adm. Code 150. Table A. (Section 2-40 of the Act)

For example, a lessor of tangible personal property who paid Use Tax up front upon acquisition of the rental property collects an amount described in the rental statements as a "tax" from lessees. Because the lease contract payment amounts do not generate a tax, the amounts collected as a "tax" are a collection of tax on nontaxable receipts and the lessee has a legal right to claim a refund of that amount. If the amount is not refunded, the taxpayer must pay the amount to the Department. (See *John Nottoli, Inc. v. Department of Revenue* (Fourth Dist. 1995, 272 Ill.App.3d 822).)

h) Filing Late Return Due to "Reasonable Cause"

- 1) The penalties imposed under Sections 3-3, 3-4 and 3-5 of the Uniform Penalty and Interest Act shall not apply if the taxpayer shows that his failure to file a return or pay tax at the required time was due to reasonable cause.
- 2) The Department will decide whether to abate a penalty by considering the extent to which the taxpayer made a good faith effort to determine his proper tax liability and pay his proper liability in a timely fashion. In making this determination the

Department will use the standards set out in the Reasonable Cause Section (86 Ill. Adm. Code 700.400) of the Uniform Penalty and Interest Act regulations.

(Source: Amended at 25 Ill. Reg. 4674, effective March 15, 2001)